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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/032,893	02/27/1998	JOHN O. BIESER	41824B	1428

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EXAMINER	
JUSKA, CHERYL ANN	
ART UNIT	PAPER NUMBER

1771

DATE MAILED: 01/15/2003

34

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/032,893	BIESER ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Cheryl Juska	1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 28 October 2002.

2a) This action is FINAL.                  2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-6,9-12 and 15-17 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-6,9-12 and 15-17 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

### ***Response to Amendment***

1. Amendment C, submitted as Paper No. 33 on October 28, 2002, has been entered. Claim 1 has been amended as requested and new claims 15-17 have been entered. Thus, the pending claims are 1-6, 9-12, and 15-17.
2. Applicant has amended claim 1 to limit that the adhesive backing material is not “integrally fused” to the primary backing material, wherein the definition of “integrally fused” is set forth in the specification, page 10, line 8-20. This amendment is sufficient to withdraw the prior art rejections based upon the cited Fink reference (WO 93/15909) (sections 5-8 of the last Office Action), since Fink’s objective is to produce an integrally fused carpet backing. However, the following new art rejections are set forth below.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. Claim 9 recites the limitation “optional secondary backing” in line 2. Due to Amendment C, which deleted the recitation to said optional secondary backing in claim 1, there is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 103***

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
7. Claims 1-6, 9-12, 15, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,344,515 issued to Parikh et al.

As discussed in the last Office Action (section 7), Parikh teaches Applicant's claimed adhesive composition and that said adhesive may be employed in a carpet backing. Parikh fails to teach the specific structure of said carpet. However, the presently claimed carpet structure (i.e., tufted primary backing, an adhesive backcoat, and secondary backing) is well-known in the art, wherein said adhesive backcoat penetrates and consolidates the tuft backloops and the primary backing so as to secure said tufts in said primary backing, as well as to adhere the secondary backing to said tufted primary backing. Applicant is hereby given Official Notice of this fact. Additionally, Applicant is hereby given Official Notice that the use of polyolefin materials for carpet face fibers, primary and secondary backings, and the adhesive backcoat are well known in the art. Specifically, polypropylene face fibers are commonplace in the art and polypropylene primary and secondary backings are conventional in the art.

Said facts being so well-known, it would have been obvious to a person having ordinary skill in the art to utilize the adhesive of Parikh as an adhesive backcoat in a known carpet structure comprising polyolefin face fibers, a polypropylene primary backing, and a polypropylene secondary backing. Such a modification would have been motivated by the explicit teachings of Parikh to produce a carpet with the inventive adhesive composition.

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The Examiner notes that the facts asserted to be common and well-known are capable of instant and unquestionable demonstration as being well-known. To adequately traverse such a finding, Applicant must specifically point out the supposed errors in the Examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art.

Additionally, it is asserted that a conventional polyolefin carpet having the inventive Parikh adhesive would inherently possess the presently claimed tuft bind strength since said carpet meets all the structural and chemical limitations of claims. The burden is upon Applicant to prove otherwise. Thus, claims 1-6, 15 and 16 are rejected as being obvious over the cited Parikh reference.

With respect to claim 9, it is first noted that if the Parikh adhesive is employed with face yarns, primary backing and secondary backing made of polypropylene, then the present limitation that the adhesive composition have a different olefin chemistry than the face fibers, primary backing, and secondary backing is automatically met. With respect to the label recitation of claim 9, it is noted that the 'recyclable representation of the label or literature' is not given patentable weight because the words or symbols written on said label or literature are not structural limitations of the presently claimed carpet. Additionally, Applicant is hereby given Official Notice that labels and/or literature are included with all carpets for sale in the United States. Thus, it would have been obvious to one skilled in the art to include a label or literature on the carpet having the Parikh adhesive backing. Therefore, claims 9-12 are rejected as being obvious over the cited Parikh patent.

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8. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Parikh patent in view of US 5,741,594 issued to Jialanella.

Parikh and the known prior art carpets discussed above do not explicitly teach a secondary backing comprising a homogenously branched ethylene polymer (HBEP) having a short chain branching distribution index (SCBDI) of greater than or equal to 50%. However, as discussed in previous Office Actions, Jialanella discloses a laminate material comprising a substantially linear polyethylene polymer, including HBEP's. As asserted by Applicant (see Paper No. 30, Request for Reconsideration, page 3, lines 6-10 and Paper No. 28, Interview Summary of July 11, 2002), Jialanella teaches said laminate material as a secondary carpet backing. Thus, it would have been obvious to one skilled in the art to substitute the Jialanella secondary backing for secondary backing of the Parikh invention, with the expectation of producing a carpet having improved delamination resistance. Therefore, claim 17 is rejected as being obvious over the cited prior art.

#### *Response to Arguments*

9. With respect to Applicant's arguments regarding the Parikh reference, said arguments are answered below in as much as said arguments are relevant to the present rejection over Parikh.

10. Applicant traverses the Parikh rejection by asserting that Parikh teaches pressure sensitive adhesives (PSA's) for adhering a carpet to a flooring substrate, rather than as an adhesive backcoat (i.e., tuft bind adhesive) (Amendment C, pages 11-12). The Examiner respectfully disagrees. First, it is acknowledged that Parikh does teach the composition is useful as a PSA. However, it is asserted that Parikh also teaches said composition as a hot melt adhesive (HMA).

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Parikh states, “The compositions of the invention will have utility in applications in which adhesives, particularly *hot melt adhesives* are typically employed....The compositions may be readily *extruded* onto a variety of substrates, including but not limited to carpet backing...” (col. 21, lines 1-13, emphasis added). Additionally, note Parikh’s distinction between HMA’s and PSA’s in the working examples (Examples 2-8 for a HMA, col. 22, lines 36-37 and Examples 21-23 for a PSA, col. 27, lines 57-58). Thus, Parikh explicitly teaches one embodiment of the invention is an extruded hot melt adhesive for carpet backing. One skilled in the art would readily recognize this as a teaching of a hot melt adhesive backcoat, rather than a PSA for adhering a carpet to a floor, as asserted by Applicant.

With respect to Applicant’s request that certain art cited on the PTO Form 892, submitted with the last Office Action, be withdrawn due to said art not being available prior to Applicant’s effective file date of February 28, 1997 (Amendment C, page 14), the Examiner respectfully declines. It is acknowledged that said art is not *prior* art, but art that is still considered pertinent to the present application. Section 9 of the last Office Action should have read “The art made of record...,” rather than “The prior art made of record....” The Examiner apologizes for the confusion.

### ***Conclusion***

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Cheryl Juska whose telephone number is 703-305-4472. The Examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



CHERYL A. JUSKA  
PRIMARY EXAMINER

cj  
January 13, 2003